STATE OF MICHIGAN

COURT OF APPEALS

C.C. MID WEST, INC., Plaintiff-Appellant,	UNPUBLISHED January 17, 2003
V HOWARD MCDOUGALL, ROBERT J. BAKER, ARTHUR H. BUNTE, JR., R. V. PULLIAM, SR., JOE ORRIE, JERRY YOUNGER, GEORGE J. WESTLEY, RAY CASH, and RONALD J. KUBALANZA, Defendants-Appellees.	No. 213386 Oakland Circuit Court LC No. 97-550272-NZ ON REMAND

Before: Bandstra, P.J., and Gage and Wilder, JJ.

PER CURIAM.

The instant matter is before this Court on remand from the Michigan Supreme Court on rehearing granted in lieu of granting leave to appeal. The Supreme Court vacated the prior decision of this Court which affirmed the trial court's grant of summary disposition, finding that on the facts of this case we erred in finding summary disposition was granted pursuant to MCR 2.116 (C)(8). The Supreme Court further directed this Court to decide whether the claims raised in plaintiff's complaint are preempted by the preemption provision of the Employee Retirement Income Security Act of 1974 (ERISA), 29 USC 1144(a). 466 Mich 894. We hold that plaintiff's claims are preempted and, therefore, affirm.

I. Facts and Proceedings

Plaintiff C.C. Midwest, Inc., a trucking company, is a wholly owned subsidiary of CenTra, Inc. (CenTra). Until 1996, CenTra also owned Central Transport, Inc. (Transport), another trucking company. At the time of the sale, Transport employed approximately 235 truck drivers, represented by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (the Teamsters), as independent contractors. As members of the Teamsters, the truck drivers were entitled to take part in the Central States, Southeast and Southwest Regions Pension Fund (Pension Fund), a multi-employer pension trust that provides

pension benefits to Teamster members.[1] As part of a collective bargaining agreement between Transport and the Teamsters, Transport made financial contributions to the Pension Fund on behalf of the truck drivers it employed. Following the 1996 sale, Transport negotiated with the Teamsters the closing of its business. As part of the closure, Transport agreed to pay a severance package totaling $4.6 million and, according to plaintiff, defendants agreed to permit the former independent contractors to make self-contributions into the Pension Fund for up to five years.

After Transport closed, plaintiff contacted truck drivers previously employed by Transport in order to negotiate possible independent contractual agreements, eventually entering into contracts with fifty-nine owner-operators who were former Transport drivers. Plaintiff alleges that thereafter, defendants advised these and other owner-operators by letter and a meeting in Fort Wayne, Indiana that the drivers would not be able to continue to make self-contributions to the Pension Fund if they performed work for plaintiff or any other company affiliated with CenTra. Plaintiff characterizes these communications by defendants as threats that resulted in twelve of fifty-nine former Transport drivers subsequently terminating their contracts with plaintiff. In addition, plaintiff asserts that it had a reasonable expectation of negotiating contracts with an additional 153 truck drivers not formerly affiliated with Transport, but that notice of defendants alleged "threats" was communicated throughout the trucking industry resulting in plaintiff only being able to contract with twenty-eight of the 153 potential truck drivers not previously associated with Transport.

Defendants dispute plaintiff's characterization of the meeting and the letter contending that their sole purpose was to inform former Transport workers of the options they had available as a result of Transport's closing, and to also inform them of the consequences employment with plaintiff, or other trucking companies, would have on their rights under the severance agreement negotiated between Transport and the Teamsters as it applied to the Pension Fund.

After plaintiff filed the case in Oakland Circuit Court, defendants removed the case to the federal district court, where they argued that the Employee Retirement Income Security Act of 1974 (ERISA), 29 USC 1001 *et seq*., preempted plaintiff's state law tort claims. The federal court found that because plaintiff's complaint asserted solely state claims and since ERISA did not provide plaintiff an opportunity to bring a civil enforcement action under § 1132(a), the case was not removable under ERISA. *CC Mid West v McDougall*, 990 F Supp 914, 924 (1998).

Thereafter, on remand to state court, defendants moved for summary disposition pursuant to MCR 2.116(C)(4) and 2.116(C)(8). Defendants argued that the trial court did not have jurisdiction to hear the case because ERISA preempted plaintiff's state claims and, alternatively, that plaintiff failed to state a claim on which relief could be granted. The trial court granted defendants' motion stating on the record that the existence and administration of the Pension Fund is a critical element of plaintiff's claims, and therefore, plaintiff's claims were preempted by ERISA. The order entered by the trial court states that defendant's motion was granted under both MCR 2.116(C)(4) and (C)(8).

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[1] Defendant Kubalanza is the Executive Director of the Pension Fund and the remaining defendants are the trustees of the Pension Fund.

We now consider the preemption issue as directed by the Supreme Court on remand.

II. Standard of Review

This Court reviews de novo the grant or denial of a motion for summary disposition. *de Sanchez v Dep't of Mental Health*, 467 Mich 231, 235; 651 NW2d 59 (2002). We also review de novo the legal question whether a court has subject matter jurisdiction. *Etefia v Credit Technologies, Inc*, 245 Mich App 466, 472; 628 NW2d 577 (2001). "When reviewing a motion under MCR 2.116(C)(4), this Court must determine whether the pleadings demonstrate that the defendant was entitled to judgment as a matter of law or whether the affidavits and other proofs show there was no genuine issue of material fact." *Jones v Slick*, 242 Mich App 715, 718; 619 NW2d 733 (2000).

III. Analysis

The preemption provision of ERISA, 29 USC 1144(a), states that ERISA "shall supersede any and all State laws insofar as they may now or hereafter *relate* to any employee benefit plan" subject to ERISA (emphasis added).[2] The inquiry whether ERISA preempts plaintiff's common law claims begins with the "presumption that Congress does not intend to supplant state law." *New York State Conference of Blue Cross & Blue Shield Plans v Travelers Ins Co*, 514 US 645, 654; 115 S Ct 1671; 131 L Ed 2d 695 (1995). Indeed, the party urging a finding of preemption bears the "considerable burden" of overcoming this presumption, particularly where the subject law is in an area traditionally regulated by the states. *DeBuono v NYSA-ILA Medical and Clinical Services Fund*, 520 US 806, 813-814; 117 S Ct 1747; 138 L Ed 2d 21 (1997).

In a number of its opinions addressing this issue, the United States Supreme Court has recognized that the term "relate to" "cannot be taken 'to extend to the furthest stretch of its indeterminacy,' because under such construction 'for all practical purposes preemption would never run its course.'" *Egelhoff v Egelhoff*, 532 US 141, 146; 121 S Ct 1322; 149 L Ed 2d 264 (2001), quoting *Travelers, supra* at 655; *DeBuono, supra* at 813-814. As such, "a state law relates to an ERISA plan only 'if it has a connection with or reference to such a plan.'" *Egelhoff, supra* at 147; quoting *Shaw v Delta Air Lines, Inc*, 643 US 85, 97; 103 S Ct 2890; 77 L Ed 490 (1983). Despite the Supreme Court's further clarification of the term "relate to," we heartily agree with the sentiment expressed by other courts that "the Supreme Court '[has] been at least mildly schizophrenic in mapping [the] contours [of ERISA preemption].'" *Trustees of the AFTRA Health Fund v Biondi*, 303 F 3d 765, 773 (CA 7, 2002), quoting *Carpenters Local Union No. 26 v US Fid & Guar Co*, 215 F3d 136, 139 (CA 1, 2000).

Because defendants do not argue that the Michigan common law actions reference an ERISA plan, the question before us is whether plaintiff's cause of action relies upon state law which has an impermissible connection with an ERISA plan. "[T]o determine whether a state law has the forbidden connection, we look both to 'the objectives of the ERISA statute as a guide to the scope of the state law that Congress understood would survive,' as well as to the nature of

[2] ERISA does not preempt "any law of any state which regulates insurance." 29 USC 1144(b)(2)(A). This exception is not applicable to this case.

the effect of the state law on ERISA plans." *California Div Of Labor Standards Enforcement v Dillingham Constr, NA, Inc,* 519 US 316, 325; 117 S Ct 832; 136 L Ed 2d 791 (1997), quoting *Travelers, supra* at 656.[3] Some causes of action, however, are simply "too tenuous, remote, or peripheral" to relate to an ERISA plan. *Shaw, supra* at 100 n 21. In deciding which actions are connected to an ERISA plan by too few threads, we consider factors such as "whether the state law represents a traditional exercise of state authority"; whether the state law "affects relations among the principal ERISA entities rather than relations between one of the principal entities and an outside party, or between two outside parties"; and "whether the state law's effect on the ERISA plans is incidental, thereby having too tenuous a relation to an ERISA plan to 'relate to' the plan." *Redall Industries, Inc v Wiegand*, 876 F Supp 147, 150-151 (1995), citing *Firestone Tire & Rubber Co v Neusser*, 810 F 2d 550, 555-556 (CA 6, 1987).

The parties have each cited numerous cases in support of their respective views as to whether ERISA preempts claims for tortious interference with a contract or business expectancy. The common theme emerging from these cases is that the determination is made on a case-by-case basis. "'[I]t is not the label placed on a state law claim that determines whether it is preempted, but whether in essence such a claim is for the recovery of an ERISA plan benefit.'" *MacKay v Grumman Allied Industries, Inc*, 993 F Supp 1068, 1070 (WD Mich 1997), quoting *Cromwell v Equicor-Equitable HCA Corp,* 944 F 2d 1272, 1276 (CA 6, 1991). Therefore, the context of the claim, rather than just its title, is crucial to determining whether the claim is preempted by ERISA.

Within this framework, we turn to an analysis of plaintiff's claims. Defendants characterize plaintiff's claims as allegations that defendants violated their fiduciary duties owed pursuant to ERISA, and assert that ERISA provides the exclusive remedy for breach of their fiduciary duties. Defendants also claim that plaintiff merely disputes a benefits determination that defendants made that allegedly caused harm to the plan participants and that plaintiff is actually making a claim for benefits on behalf of the drivers. We are compelled to disagree with defendants' characterizations of plaintiff's claims. Initially, we note that by vacating our opinion, which found that summary disposition had been granted by the trial court under an MCR 2.116 (C)(8) analysis because plaintiff did not state a viable tortious interference claim, the Supreme Court has implicitly held that plaintiff did state a viable claim. Secondly, because defendants do not stand in a fiduciary relationship with plaintiff, plaintiff's claims do not arise out of an alleged breach of a fiduciary duty. Additionally, plaintiff's claims are for harm suffered in its own right, not for any harm suffered by the drivers, as is the nature of claims for tortious interference. Nevertheless, we conclude that plaintiff's claims are preempted by ERISA.

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[3] When Congress passed the preemption provision, it intended

> "to ensure that plans and plan sponsors would be subject to a uniform body of benefits law; the goal was to minimize the administrative and financial burden of complying with conflicting directive among the States or between States and the Federal Government . . . , [and to prevent] the potential for conflict in substantive law . . . requiring the tailoring of plans and employer conduct to the peculiarities of the law of each jurisdiction." [*Travelers, supra* at 656-657, quoting *Ingersoll-Rand Co v McClendon*, 498 US 133, 142; 112 S Ct 478, 112 L Ed 2d 474 (1990).]

As we stated in our prior opinion, defendants, as fiduciaries of the Pension Fund, had a statutory obligation under ERISA to inform plan participants of matters that could affect their interests under the plan. See *Varity Corp v Howe*, 516 US 489, 502; 116 S Ct 1065, 1073; 134 L Ed 2d 130 (1996); See also 29 USC 1104(a). In addition, plan participants are always entitled to information necessary to enable the participant to enforce his rights under a plan or to redress a breach of trust. See, e.g., *In re Childress Trust*, 194 Mich App 319, 328; 486 NW2d 141 (1992), citing 1 Restatement Trusts, 2d, § 173, comment c, p 378. The United States Supreme Court further stated in *Varity*, *supra*, that:

> Conveying information about the likely future of plan benefits, thereby permitting beneficiaries to make an informed choice about continued participation, would seem to be an exercise of power "appropriate" to carrying out an important plan purpose. After all, ERISA itself specifically requires administrators to give beneficiaries certain information about the plan. . . . To offer beneficiaries detailed plan information in order to help them decide whether to remain with the plan is essentially the same kind of plan-related activity. [*Id*. at 502-503; 116 S Ct at 1073, citing ERISA §§ 102, 104(b)(1), 105(a).]

As we did in our first opinion, we again conclude that defendants' actions were undertaken as fiduciaries of the Pension Fund. By law, defendants had a duty to inform the plan participants of their rights under the plan and how those rights may be affected by certain employment contracts. *Varity*, *supra*; *In re Childress Trust*, *supra*. The meeting held with and the letter sent to the plan participants by defendants informed the participants that their opportunity to make self-contributions to the plan for a period of up to five years could be jeopardized by employment with certain companies, including plaintiff, and informed the plan participants to contact the Pension Fund's toll free number in order to find out how their decisions may impact their benefits. The trial court did not err by concluding that even if the administration of the fund was malicious as alleged by plaintiff, the manner in which the Pension Fund was administered is a critical factor in plaintiff's claims and thus plaintiff's claims are subject to preemption. See *Ingersoll-Rand Co v McLendon*, 498 US 133, 139-140; 111 S Ct 478; 112 L Ed 2d 474 (1990).

Although preemption of a state law claim does not exist when only a "cursory examination" of an ERISA plan's provisions is required, *Biondi*, *supra* at 780, ERISA does "'preempt[] a state law claim if the claim requires the court to interpret or apply the terms of an employee benefit plan.'" *Id.*, quoting *Collins v Ralston Purina Co*, 147 F 3d 592, 595 (CA 7, 1998). Here, because resolution of plaintiff's claims requires the court to determine whether defendant's communications were appropriate under the terms of the fund, the court must go beyond a "cursory examination" of the plan's provisions and interpret its terms. Unlike the plaintiff in *Darcangelo v Verizon Communications, Inc*, 292 F3d 181, 193 (CA 4, 2002), here the plaintiff does not assert "improper conduct so unrelated to the plan that it cannot be termed 'plan administration' of any sort," but claims that defendants committed torts in tandem with performance of their fiduciary duties. *Id.* Although plaintiff's claims are not intimately tied to "core concerns of the ERISA legislation[,] . . . the plan and the communications giving rise to the [tortious interference claim] appear inseparable." *Fairneny v Savogran Co*, 422 Mass 469, 476; 644 NE2d 5 (1996).

While we recognize that plaintiff also alleges injuries concerning its dealings with owner-operators throughout the trucking industry that had no prior association with Transport, we are not persuaded that these allegations are sufficient to avoid preemption. Plaintiff does not allege in the Complaint that defendants communicated with non-participant owner-operators in any respect. Thus, even if defendants knew or reasonably should have known that owner-operators throughout the industry might become aware of these communications, the character of these communications as between defendants as fiduciaries and former Transport owner-operators as plan participants does not render the doctrine of preemption inapplicable here. In similar vein, the fact that plaintiff may be left without a meaningful remedy does not alter the fact of preemption. *Muse v International Business Machines Corp*, 103 F3d 490, 495 (CA 6, 1995); *Massachusetts Cas Ins Co v Reynolds,* 113 F3d 1450, 1454 n 2 (CA 6, 1997).

In summary, we find that plaintiff's claims are preempted by ERISA and that summary disposition was properly granted.

Affirmed.

/s/ Richard A. Bandstra
/s/ Hilda R. Gage
/s/ Kurtis T. Wilder